

States of Jersey
States Assembly



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Assemblée des États

Corporate Services Scrutiny Sub-Panel

Population and Migration Review - Part 2



Presented to the States on 19th February 2013

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1. CHAIRMAN'S FOREWORD

The dynamics and drivers of population and migration growth are many and diverse. As Chairman of this review, I wondered at times how it came to pass that the States had followed this particular route to merge both housing and work laws into this complex and difficult to understand piece of legislation. I felt at times that, while my Sub-Panel were being asked to review the provisions of the Control of Housing and Work Law (Jersey) Law 201 and the Register of Names and Addresses (Jersey) Law 201, someone should have at a much earlier stage been reviewing a simpler and more straightforward Migration Law.

The vast majority of people born in Jersey and those that come to work and live here wish to live as law-abiding tax-paying citizens and want to play a full and responsible part in island life. That includes the most recent arrivals. However, a small minority of all people including recent immigrant arrivals will want to abuse the system and that can include those that evade paying taxes, social security payments, abusing the Income Support system, working illegally or being paid cash in hand. Traditionally, many new immigrants qualified through relationships or marriage and in this case, over 50% of all established immigrants qualified in this way. The majority of migrants become valued, economically active citizens. However, uncontrolled and unregulated net inward migration such as we have seen has consequential effects on the quality of island life and this is a problem magnified when in tandem to an economic recession such as we are seeing.

The results of the Jersey 2011 census show that the island very much mirrored England and Wales in terms of % increase in population spike between 2004 and 2008. That is not sustainable in the longer term for Jersey and that is why the previously unenforced laws allowed this to happen. Had existing and separate housing and business regulation laws been enforced and amended to modern day requirements perhaps the situation of net inward migration might not have become such an issue within the island population.

The Sub-Panel concluded that, in order for the Control of Housing and Work Law and provisions to effectively manage population and migration, the new control mechanisms must be applied and enforced. We also believe, however, that the enforcement of the law will not be possible and will fail if the current enforcement proposals and manning resources levels are not significantly improved. A change of culture has now got to happen within the Population Office as a matter of some urgency. The proposal to have 1.5 full time employees carrying out this role (with the possibility of increasing the number to 2.5 in the future) will simply be, in the Sub-Panel's view, utterly inadequate. More enforcement officers will have to be recruited and a greater number of compliance checks need to be carried out without notice. The same officers will have to establish a highly visible boots on the ground team to stand at the car-ferry ramps and see who is coming in with a work van. Likewise, officers will

have to randomly enter construction and building sites, restaurants, kitchens, retail shops, hotels and stores to establish bona fide registration to work.

The previous culture within the Population Office of excellent information manpower return priority and the consideration of locally qualified or non-locally qualified application permits will have to change. The Population Office by and large only concentrates on those applicants that bring themselves before the Migration Advisory Panel and present an application for supplementary employees. That is not where the problem exists. The problem exists largely within the current unqualified sector that will soon become known as the Registered sector.

The Isle of Man has developed a well established whistleblowing policy. It works like this. Any vehicle that has a non-Manx registration number, particularly commercial vehicles, arouses concern and very often the office responsible for migration receives a phone call. They normally act immediately. Likewise, the public have a practised reporting policy for occupancy of houses and flats to ensure that recent arrivals are working legally. A healthy whistleblowing policy in Jersey is needed and encouraged and can only work if enforced by visits from the Population Office.

The accuracy and reliability of the new Name and Address Register will have to be established quickly so as to validate who is working and living in Jersey. The Sub-Panel are of the opinion that the merging of many databases of information including Income Tax, Social Security and Population Office IT systems is a large complex task and the Population Office may well have under-estimated the task in hand. The addition of the Driver and Vehicle Standards database with the Education Department and the Health database will be a necessary additional cross-referencing source of information. An exit poll strategy for those departing will have to be introduced to enable more accuracy in assessing who is living and working here.

The whole issue of under-utilised non-qualified business licenses is part of the problem and the Sub-Panel recommends a fee structure for every licence issued. Another major concern is that the Registration Card is to be issued without photographic identification. As a result, supplementary I.D in the form of a passport or driving licence will have to be immediately available and carried. We do not think this is practical and we do not see how it would work in an inspection scenario in a kitchen or on a building site. We also worry about the tradability culture that might develop with the Registration Card and we feel that this is a potentially serious issue.

Finally, I come to the vexed question of political responsibility. Three Ministers and their Departments will continue to have a say in Jersey's Migration Policy, the Chief Minister, the Economic Development Minister and the Housing Minister, as currently constituted. The Chief Minister will decide who will get a licence. It has been my consistent view for over four years that one Minister must take 100 % control of Population and Migration Policy and that any Minister that has political responsibility for

population and migration must not have any direct or indirect say in economic development or expansion as a serious tension and conflict exists. These unhealthy departmental overlaps such as we see from time to time are to be avoided at all costs.

I thank my hard-working vice-chairman Deputy Richard Rondel and my diligent colleagues who took part in this, The Connetable of St. Saviour, and Deputies Southern and Le Bailly.

A handwritten signature in black ink, appearing to read 'S Power'.

Deputy Sean Power, St. Brelade No. 2.
Chairman, Population and Migration Sub-Panel

2. EXECUTIVE SUMMARY

- 2.1 The 2011 Census showed a considerable rise in overall population numbers which subsequently called into question the ability of the current control mechanisms to effectively manage Jersey's population size. The new Control of Housing and Work (Jersey) Law and Register of Names and Addresses (Jersey) Law, due to be introduced in April 2013 are intended to provide the States with greater powers to control net inward migration to the island.
- 2.2 The Sub-Panel found that the real success of the new legislation will be greatly dependent on the extent to which it is policed and enforced, once it is in place. In the past, the number of compliance checks that have been carried at the workplace and the harbour has been inadequate. In order to ensure that the new law is adhered to and to help overcome the issue of the so called 'white van man' it is imperative that compliance checks are carried out at appropriate locations much more frequently in the future. Failure to do so could significantly reduce the effectiveness of the new control mechanisms. Furthermore, it is also crucial that a sufficient number of compliance officers are available to enforce such an extensive piece of legislation. In this regard, the Sub-Panel is sceptical that 2.5 'boots on the ground' staff will be sufficient to police the Control of Housing and Work Law effectively. Subsequently it recommends that, once the new legislation is in operation, the number of officers available to the Population Office is re-assessed to ensure that it is adequate. If compliance procedures are not significantly improved under the new law it is inevitable that the Island will face the same problems as the existing system.
- 2.3 Encouraging 'whistleblowing' where necessary in Jersey could also play a vital role in ensuring that the new system is enforced. The Chief Minister should ensure that members of the public are actively encouraged to report any suspected non-compliant activity to the Population Office so it can be further investigated. In order for whistleblowing to be successful however, the public need to be confident that action will be taken if and when non-compliance is indentified. The fact that no prosecutions have been made under the Regulation of Undertakings and Development (Jersey) Law since it was introduced in 1971 raises doubts over the ability of Ministers and their Departments to enforce these existing laws. The Sub-Panel believes that the new powers under the Control of Housing and Work Law, to cease illegal activity immediately, will provide an important means of enforcing compliance with the law, *provided these powers are exercised*.

- 2.4 In order to ensure that the new law is managed in a fair and pragmatic way it is imperative that the Population Office work *with* businesses, particularly during the transition period from the existing law to the new law. It would be unreasonable to assume that people should comply with the law without having been effectively informed of what the new system entails. In this regard, the Chief Minister should ensure that the general public are effectively notified regarding the provisions of the new legislation in advance of the new system coming into force.
- 2.5 In the past, too great a degree of lenience has been shown regarding the number of non-qualified licences issued to businesses. Although the Population Office has already commenced work to remove unutilised non-qualified licences from businesses, the Sub-Panel found that a significant number still remain. The ability to vary or remove a licence for unqualified staff at anytime under the new legislation could, if enforced, provide the States with greater control than the current system provides. However, in line with the States' top priority to manage population and migration levels, the Chief Minister should consider removing unutilised non-qualified business licences at the point of implementation of the new legislation.
- 2.6 Under the Control of Housing and Work Law new arrivals will be exempt from registering for the first 90 days of living in the island, provided they do not seek work within that time period. It was felt by the Sub-Panel, however, that a period of less than 3 months would be more appropriate given the aims of the new legislation. For example, if a new arrival can live legitimately on the Island for 90 days without having to obtain a card, and therefore not appearing on the Names and Addresses Register, the incentive to join the system may be reduced. The Sub-Panel also found that the proposal to exempt short-term workers from registering under a three month period could significantly affect the States' ability to monitor transient populations and may increase the risk of non-compliance. The Chief Minister should therefore ensure that every individual worker employed under a legitimately licenced contractor is required to register before they can begin work.
- 2.7 The implementation of the new legislation will not independently solve the issue of increasing population and migration levels and all its associated problems. The extent to which population and migration will be controlled in the future depends greatly on the decisions that are made during the debate on Population Policy. Although it was originally intended that the Population Register would be complete and accurate by April 2013, the evidence seems to

suggest otherwise. Although the Sub-Panel is yet to receive confirmation on when the debate is to take place, there is a possibility that the Register will not be fully functional in advance of these discussions. The report shows that a considerable amount of work still needs to be undertaken by the Population Office before the Register will be complete. Any significant delay in the completion of the Register will have a considerable effect on the new system and its ability to control population and migration levels. Furthermore, it would be inappropriate and ineffective to hold a debate on Population Policy without all the information available. It is imperative therefore, that due consideration is given to providing the Population Office with increased resources to ensure that the Register is complete and accurate in advance of the debate so that States Members can make informed decisions regarding the Island's future.

3. KEY FINDINGS

- 3.1 As of yet and for whatever reason, no decisions have been made by the Chief Minister with regard to extending the qualifying period for access to work from 5 years back to 10 years. (See 6.4)**
- 3.2 There has been too much lenience in the past with regard to the number of non-qualified licences issued to businesses. (See 6.11)**
- 3.2 The ability to vary a licence for unqualified staff at anytime under the Control of Housing and Work Law will provide the States with greater control than they have under the current system. (See 6.13)**
- 3.3 Work has already begun to remove non-qualified licences from businesses. Despite this, however, a significant number of unutilised licences of this category still remain. (See 6.15)**
- 3.4 Subsequent to a Sub-Panel Public Hearing with the Chief Minister, it has now been agreed by the Council of Ministers to introduce a fee for all Registered licences. (See 6.24)**
- 3.5 Tighter controls on unqualified licences will not independently solve the current unemployment situation. (See 6.29)**
- 3.6 It is obvious that some local people need to be educated and trained to undertake work in areas that are traditionally associated with non-qualified people. (See 6.30)**
- 3.7 The existence of the Registration Card will make it easier for businesses to comply with the new legislation and their licence allocation. (See 6.32)**
- 3.8 New arrivals will be exempt from registering for the first 3 months of living in the Island, provided they do not work within that time period. (See 6.37)**
- 3.9 The proposal to exempt short-term workers from registering under a 3 month period could significantly affect the States ability to monitor transient populations and may increase the risk of non-compliance. (See 6.42)**
- 3.10 The Sub-Panel has not been convinced that adequate consideration has been given to the inclusion of a photograph on the new Registration Card. (See 6.47)**

- 3.11 In the absence of a photograph, it is imperative that a form of identification is shown alongside the new Registration Card for all transactions as a method of validation. (See 6.51)**
- 3.12 At point of implementation, the Register of Names and Addresses will be linked up to the databases held at Social Security, Income Tax and the Population Office. (See 6.57)**
- 3.13 There is a great deal of uncertainty as to when the Population Register can be relied upon as a rolling measure of Jersey's Population. (See 6.59)**
- 3.14 A considerable amount of work still needs to be undertaken by the Population Office before the Register will be complete. (See 6.63)**
- 3.15 The Population Office significantly underestimated the resources needed to implement the Register of Names and Addresses. (See 6.64)**
- 3.15 Any significant delay in the completion of the Register will have a considerable effect on the new system and its ability to control population and migration levels. (See 6.65)**
- 3.16 The new Combined Return will provide the States with a much improved depth of information which in turn should allow for better licence enforcement. (See 7.7)**
- 3.17 If the IT system works as envisaged, there is high chance that improved sharing of information will lead to a more efficient and effective compliance operation. (See 7.10)**
- 3.18 In order to reap the real benefits of the Register it is imperative that as soon as non-compliance is identified officers are sent to investigate and if necessary take action. (See 7.11)**
- 3.19 The number of compliance checks carried out under the existing system is inadequate. (See 7.16)**
- 3.20 There is great deal of uncertainty as to whether the proposed increase in manning levels from 1.5 to 2.5 'boots on the ground' staff will be sufficient to enforce compliance with the Control of Housing and work law. (See 7.21)**
- 3.21 A culture of 'whistleblowing' in Jersey could be key to ensuring that the new system is enforced. (see 7.25)**

- 3.22 The real success of the new legislation is dependent on the extent to which it is policed and enforced. (See 7.29)**
- 3.23 Provided they are exercised, the new powers to cease illegal activity immediately will provide an important means of enforcing compliance with the law. (See 7.30)**
- 3.24 The Population Office must work *with* businesses to ensure that the new law is understood and managed in a fair and pragmatic way. (See 7.34)**
- 3.25 The issue of political responsibility for the implementation of the Control of Housing and Work Law has not yet been fully resolved. (See 7.40)**

4. RECOMMENDATIONS

- 4.1 The Chief Minister should now urgently set out to ensure that once the law has been implemented due consideration is given to an extension of the qualifying period for access to work from five to ten years and the potential implications for population and migration levels. (See 6.5)**
- 4.2 The Chief Minister should undertake a thorough and accurate audit of the number of non-qualified licences issued to businesses every 6 months and in advance of any Population Policy debate. Furthermore, these findings should be published in a report and presented to the States. (See 6.12)**
- 4.3 In line with the States top priority to manage population and migration levels, the Chief Minister should consider quickly and effectively removing unutilised non-qualified licences at the point of implementation of the new legislation. (See 6.16)**
- 4.4 Effective enforcement measures must be developed alongside the new charge for Registered licences to minimise the risk of non-compliance amongst businesses. (See 6.25)**
- 4.5 The Chief Minister should review the 90 days grace period as it is likely that it will lead to inaccuracies in the Register. (See 6.38)**
- 4.6 With regard to the proposal to exempt short-tem workers from registering under a 90 day period, the Chief Minister should ensure that every individual employed under a legitimately licenced contractor is required to Register, before they can begin work. (See 6.43)**
- 4.7 The Chief Minister should review the current policy on photographic identification within 12 months of the new law being implemented. (See 6.48)**
- 4.8 The Chief Minister should ensure that the public are sufficiently informed regarding the rules and procedures for checking Registration Cards prior to the new law being implemented. (See 6.52)**
- 4.9 Further consideration should be given to the establishment of a refund system for the Registration Card in order to help monitor population levels for efficiently. (See 6.69)**

- 4.10 The Chief Minister should ensure that more frequent compliance checks are carried out at the appropriate locations to ensure that the new legislation is being adhered to. Failure to do so could significantly reduce the effectiveness of the new control mechanisms. (See 7.17)**
- 4.11 When the new law is in operation, the number of officers available to the Population Office should be re-assessed to ensure that it is adequate. (See 7.22)**
- 4.12 The Chief Minister should ensure that members of the public are actively encouraged to report any suspected non-compliant activity to the Population Office so it can be further investigated. (See 7.26)**
- 4.13 Once the Regulations have been agreed by the States Assembly and in advance of the new system coming into force, the Chief Minister should ensure that the general public are sufficiently notified regarding the provisions of the new legislation. (See 7.35)**
- 4.14 The Chief Minister should ensure that the structure of the Migration Advisory Group is included in his assessment of the effectiveness of the new legislation. (See 7.41)**
- 4.15 The Chief Minister should give due consideration to increasing the resources available to the Population Office to ensure that the Register of Names and Addresses is fully functional before the Population Policy debate in order to inform decisions regarding the Island's future. (See 8.6)**

5. INTRODUCTION

- 5.1 On 24th April 2012, the Corporate Services Scrutiny Panel published its report on Population and Migration - Part 1. The report concluded that the 2011 Census results called into question the Population Policy agreed in 2009 and the capacity to control inward migration. The 2011 total resident population figure of 97,857 (a growth of 9,100 since 2001) and the increasing unemployment levels in Jersey caused much concern to the Panel and general public alike. At the time of the Census, 2,534 adults of working age were unemployed and looking for work. Of the unemployed persons, 81 per cent had A-H category residential qualifications and 19 per cent were not qualified. Furthermore, an astonishing 52 per cent of these unemployed were born in Jersey¹. Despite the unemployment situation, the total net inward migration figure had increased by 6,800 since 2001 which had impacted on, not only the total population numbers, but also the working age population².
- 5.2 The Corporate Services Scrutiny Panel concluded that the population figures resulted from the failings of the current control mechanisms. This subsequently led to questions regarding the effectiveness of future population controls. During its first review the Panel was advised that the new legislation (*Control of Housing and Work (Jersey) Law* and the *Register of Names and Addresses (Jersey) Law*) would allow for greater control and enhanced compliance of future population and immigration levels in a more appropriate way than our current control mechanisms³. Despite this reassurance the Panel deemed it necessary to establish a Sub-Panel to undertake a second review into Population and Migration which would assess the new legislative framework in greater detail. It was agreed that the 2011 Census results and the substantial increase in population and net inward migration warranted a greater consideration of future controls. Moreover, the importance of such a review was further justified by the results of the Jersey Annual Social Survey 2012, which revealed that the issue most frequently chosen (by three-fifths, 58% of respondents) as one of the top priorities for the government in Jersey to focus on was to 'control inward migration'⁴.
- 5.3 During its first review, the Panel was advised that although it was regarded as a 'challenging' deadline, the implementation of the new laws was anticipated for July 2012. However, Privy Council approval was not obtained in sufficient time to introduce the new Legislation in July.

¹ Jersey Census 2011, Bulletin 4: Unemployment, page 2 and 3

² Jersey Census 2011, Bulletin 2: Place of Birth, Length of residency, marital status, page 3

³ Transcript of Public Hearing with the Chief Minister, 23rd March 2012, page 50

⁴ Jersey Annual Social Survey 2012, Statistics Unit, page 9

In response to this delay the Population Office issued a press release which included the following statement from Assistant Chief Minister, Senator Paul Routier:

“I am disappointed that the Law could not be ratified by the Privy Council any earlier, as this legislation is an essential component in achieving our strategic objectives of limiting immigration and securing employment for locally qualified people. However, we are continuing to apply our existing legislation to its full extent to control immigration and help unemployed islanders find work⁵.”

- 5.4 The new Control of Housing and Work law (CHWL) was finally approved by the Privy Council on 17th October and registered in Jersey’s Royal Court on 26th October 2012. The new expected date for the implementation of the CHWL is April 2013, provided that the subordinate legislation (Regulations agreed by the States and Ministerial Orders) is approved by the States Assembly (due to be debated on 5th March 2013). Furthermore, it is also anticipated that the Population Policy debate will take place this year, following the decision by the Council of Ministers last year to defer the debate until an updated population model was available.
- 5.5 It was the intention of the Corporate Services Sub-Panel to undertake a review to examine the provisions proposed in the *Control of Housing and Work (Jersey) Law*, in light of the 2011 Census results. The Sub-Panel had no difficulty in agreeing that this matter merited review, despite the fact that the primary Legislation had already been approved by the States in 2011. The delivery of the Population Policy will depend on the effectiveness of the new population and migration control mechanisms and it is therefore necessary to conduct appropriate examination of the legislation.
- 5.6 The focus of this review to date has therefore been on measures to control population and migration; the need for enforcement; and future debate. Within these areas it became apparent that the following questions should be considered when discussing control mechanisms:
1. How is it proposed that the new legislation will control population and migration?
 2. How will the new law be enforced?
 3. Who will be responsible for the new legislation and the control of population and migration?
 4. What issues need to be considered when discussing population policy?

⁵ Press Release, Timetable for Control of Housing and Work Law, 30th July 2012

6. CONTROLLING POPULATION AND MIGRATION

6.1 The new Control of Housing and Work (Jersey) Law replaces three existing Laws – The Housing Law, the Regulation of Undertakings and Development Law and the Hawkers and Non-Resident Traders Law. Under the new law, the old categories of island residence will be simplified so that everyone in Jersey fits into one of the following categories (please note that these new categories will be referred to throughout this report):

- *Entitled* – Those who are currently described as having housing qualifications by birth, or through staying in the Island for a minimum of ten years, who have open access to work and accommodation. Furthermore, a person will become ‘Entitled for work’ after 5 years’ continuous ordinary residence.
- *Licensed* – Those who have an essential job, similar to the J-Category licence. They will usually be able to lease or purchase any accommodation, but their licence may include conditions.
- *Registered* – Those currently described as unqualified whose access to jobs is restricted to five years and whose access to accommodation is restricted for ten years.

6.2 As shown in the above ‘Registered’ category, residential status for work and housing under the new law will remain very similar to current arrangements, based on 5 or 10 years of residency. However, this subject has been a matter of controversy for some time with several arguments being proposed for extending the current ‘5-year rule’ and aligning it with the housing qualifying period at 10 years. For example, during the consultation period for new legislation in 2009 this same proposal was rejected on the basis that it would be difficult to achieve and potentially undesirable on a number of levels due to loss of rights for existing residents and complexity. However, during part one of the Population and Migration review in 2012, the Chief Minister told the Corporate Services Panel that the benefits for increasing the ‘5 year-rule’ needed to be re-assessed in light of the current economic climate⁶.

6.3 Since 2009 statistics show that a significant increase has been observed in the probability of migrants staying in Jersey for longer, once they have completed their first year on the Island. In light of the 2011 Census results it could therefore be argued that increasing the qualifying period for access to work from 5 to 10 years could be advantageous in helping to control population levels. When this subject was posed to witnesses at the Public Hearings, the

⁶ Transcript of Public Hearing with the Chief Minister, 23rd March 2012, page 46

responses that the Sub-Panel received varied greatly. For example, whilst it was the belief of the Minister for Social Security that the current five year period is appropriate⁷, the Assistant Chief Minister provided the view that more thought should be given to the possibility of extending the period to 10 years⁸. Concerns were raised however regarding the implications for bringing a change forward before the law was in place. The Director of Corporate Policy made it clear to the Sub-Panel that any changes at this point could seriously delay the implementation of the Law⁹, which all agreed was not desirable. Nevertheless, the Sub-Panel feel that it is important that due consideration is given to this matter, once the legislation is in operation, and the potential impact such a change could have on future population and migration levels.

KEY FINDING

6.4 As of yet and for whatever reason, no decisions have been made by the Chief Minister with regard to extending the qualifying period for access to work from 5 years back to 10 years.

RECOMMENDATION

6.5 The Chief Minister should ensure that, once the law is implemented, due consideration is given to an extension of the qualifying period for access to work from five to ten years and the potential implications for population and migration levels.

6.6 Another important subject that must be considered is the period in which Jersey residents become entitled to receive income support. Interestingly, the Jersey Annual Social Survey 2012 revealed that 49 per cent of islanders felt that the length of residency of a household member required to gain eligibility to apply for income support should be increased from the current level of 5 years continuous residence¹⁰.

6.7 Opposing to this view, the Minister for Social Security provided the following comment during a Public Hearing:

⁷ Transcript of Public Hearing with the Minister for Social Security, 17th December 2012, page 39

⁸ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 46

⁹ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 46

¹⁰ Jersey Annual Social Survey 2012, Statistics Unit, page 5

"I do think if somebody has been working continuously in the island for 5 years and they fall on hard times, whether it is loss of partner or divorce, or whatever it might be, and they need some financial assistance, then it is right that we should be able to step in and assist...therefore if they were working or we would expect them to be working, we can top them up until they get back on their feet"¹¹.

Although these matters require further discussion, at this stage they do not form part of the new legislative framework that reshapes the current housing and work controls. This subject will be reconsidered, however, during a future review on the new Population Policy. For the remaining part of this section we will examine the main provisions proposed with the legislation and aim to answer the following question: ***How will the new laws control population and migration levels?***

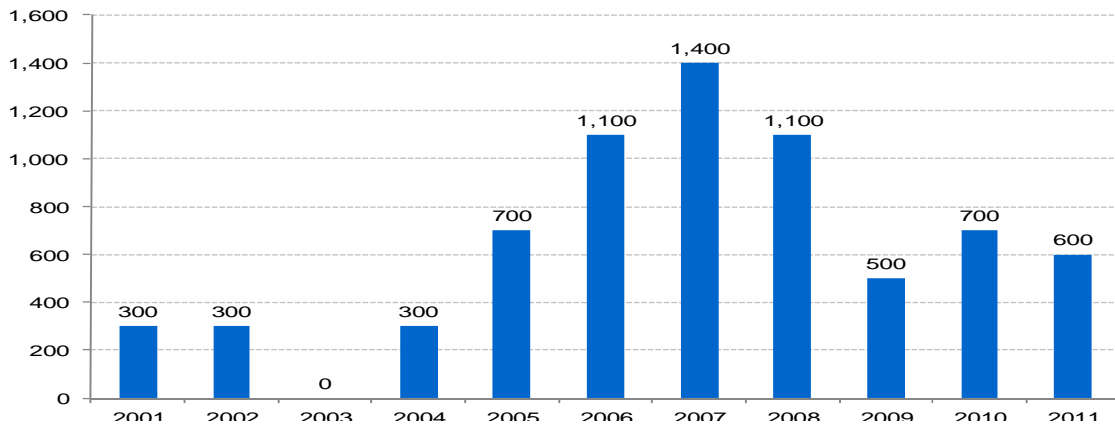
- 6.8 According to the Director of the Population Office, the new law will mean tighter controls, better information and a more streamlined system and the two main methods that will be used to achieve these aims are registration cards and an island-wide population register. In addition, it is believed that the Control of Housing and Work (Jersey) Law will provide the States with greater powers to control the number of licences that are held by businesses for registered staff. Each of these matters will now be discussed in turn.

Business Licences

- 6.9 One of the ways that this new legislation aims to manage population and migration levels is through the control of access to work and employment opportunities. As mentioned previously, the total net inward migration figure had increased by 6,800 since 2001 which is much higher than what was originally anticipated. As part of the Strategic Plan 2009-2014, the Population Policy had aimed to limit migration over a five-year period to a maximum of 150 heads of household per annum (corresponding to an overall increase of 325 people per annum). However the last Census revealed in 2011 that the threshold had been more than doubled over the last decade. For example, during the last 10 year-period the mean annual net inward migration was 700 people per year into the Island¹² (see graph below).

¹¹ Transcript of Public Hearing with the Minister for Social Security, 17th December 2012, page 39

¹² Jersey's Resident Population 2011, Statistics Unit, 15th June 2012

Net migration of people INTO the Island per annum, 2001 to 2011

6.10 Given the current 5 year restrictions on income support, the Minister for Social Security holds the opinion that, unless people that arrive from outside of the Island find employment, they will not be able to afford to live in Jersey¹³. Therefore, despite our current economic climate and high unemployment levels, Ministers have been too lenient on the number of registered licences issued to businesses.

KEY FINDING

6.11 There has been too much lenience in the past with regard to the number of non-qualified licences issued to businesses.

RECOMMENDATION

6.12 The Chief Minister should undertake a thorough and accurate audit of the number of non-qualified licences issued to businesses every 6 months and in advance of any Population Policy debate. Furthermore, these findings should be published in a report and presented to the States.

6.13 During the Public Hearings the Sub-Panel was re-assured that, under the current law, work had already begun to 'tighten up' on the number of business licences issued. For example in 2010, 390 requests for non-locally qualified licences were refused; 334 in 2011 and 119 in 2012. Furthermore, in the first two quarters of 2012 only 9 permissions for licences had been granted which is considerably fewer than the 154 granted in 2010 and 158 in 2011. The Ministers have also begun removing licences from businesses that are not being utilised; in

¹³ Transcript of Public Hearing with the Minister for Social Security, 17th December 2012, page 7

2010 565 licences were removed, 375 in 2011 and 123 in the first two quarters of 2012¹⁴. Under the existing law there is a 3-year cycle in which the States can review licence allocation and, if there is found to be unutilised capacity, it is supposedly removed from the business. Under the new law however a licence can be varied at anytime, which is hoped will give the States a higher frequency of control and ability to intervene, should that prove necessary¹⁵. For example, the number of registered licences can be adjusted according to the economic situation at the time. Similarly, conditions can be imposed on an employer that requires them to employ someone local next time they recruit. It will not be possible, however, to remove business licences that are being utilised as the States cannot make anyone who is in work unemployed.

KEY FINDING

6.14 The ability to vary a licence for unqualified staff at anytime under the Control of Housing and Work Law will provide the States with greater control than they have under the current system.

6.15 In regards to the transition period between the current system and new system, it is currently proposed that the maximum number of licences businesses hold for registered staff under the Regulation of Undertakings Law will become the maximum they are permitted under the Control of Housing and Work (Jersey) Law¹⁶. Therefore, a business would carry over the same number of licences they currently have (utilised or not) and it will be the decision of the Chief Minister under the new law to remove excess capacity when deemed appropriate. It could be argued, however, that if the States are indeed committed to controlling the number of registered staff a business is permitted, then excess capacity should be removed at the point of implementation. When the licence figures are examined the significance of this matter becomes apparent. For example, as of December 2011, a total of 8,450 non-locally qualified licences were issued to various businesses in Jersey and over a third (2,920) of the licences not being used. At the time of writing this report the 2012 figures for excess licence capacity were not yet available and therefore it has not been possible to make a comparison. However, the Population Office has advised that since December 2011 over 1000 non-qualified licences have been removed from businesses in Jersey.

¹⁴ Transcript of Public Hearing with the Minister for Economic Development, 10th December 2012, page 6

¹⁵ Transcript of Public Hearing with the Minister for Economic Development, 10th December 2012, page 7

¹⁶ P.3/2013, Draft CHWL (Transitional and Consequential Provisions) (Jersey) Regulations 2012-, page 16

KEY FINDING

6.16 Work has already begun to remove non-qualified licences from businesses. Despite this, however, a significant number of unutilised licences of this category still remain.

RECOMMENDATION

6.17 In line with the States top priority to manage population and migration levels, the Chief Minister should consider removing unutilised non-qualified licences at the point of implementation of the new legislation.

6.18 The Sub-Panel has expressed concerns on the subject of issuing Registered licences and questions whether there are enough powers in the law to say ‘no’ to applications when pressure is being applied by businesses. According to the Minister for Economic Development this is something that is already happening under the current system:

“ It is the same now as is the case where a business comes forward and says that it wants X number of non-locally-qualified, for example for a business. It has to deliver a business plan. It has to demonstrate that it has been through a process of looking for locally qualified people and what the ramifications and impact would be on its business if it does not get what it wants”¹⁷.

The criteria that the Chief Minister must consider when deciding a licence application have been updated and are now included in the law as opposed to being addressed in policy statement, as is currently the case. The wider criteria that can be considered include; the environment, the economy, public interest and the policies of the States¹⁸.

6.19 It is agreed by the Sub-Panel that the ability to revoke and revise licences on a more regular basis will provide the States with more powers than are currently available under the existing system. However, in order for it to have a significant impact on population and immigration levels in the future it is essential that the rules under the new Control of Housing and Work (Law) are enforced. If, for example, businesses do not employ enough locals compared to the industry average or do not have training programmes in place, their quota for registered staff should be re-assessed more frequently. The subject of enforcement will be discussed later on in this report.

¹⁷ Transcript of Public Hearing with the Minister for Economic Development, 10th December 2012, page 6

¹⁸ P.37/2011 Draft Control of Housing and Work (Jersey) Law 201-, page 20

J-Cat Licences

6.20 In the past concern has been raised about the lack of control over the allocation of J-category licences under the current system. However, under the new law a J-cat licence will be allocated to a business for specific job areas under the quota system. As the Director of Corporate Policy explained:

“the transitional regulations set out a principle that says that the number of J’s that a business currently has will translate into a quota of Licenced posts at the point the new law goes live”¹⁹.

6.21 Although these changes will allow for a tighter control over the recruitment of Licenced employees, there is still concern among the Sub-Panel regarding the length of licence that is being issued. For example, if the licence allows for 5 years employment, after such time, the person will be locally qualified for work and the chances of them becoming permanent residents’ increases greatly. In response to this issue, the Minister for Housing told the Sub-Panel:

“We aim to do 3 years if we can. We aim to do none if we can. That is where we start, and if it is essential, some jobs can be done in 3 years and someone trained to replace them. Some cannot, and you have to be realistic about that if you want to attract the right person”²⁰

Furthermore, the Sub-Panel accepted comments by both the Minister for Housing and the Minister for Economic Development that J-categories have very little impact on the Island’s resources. Firstly, they place no pressure on the housing list (as they would not be eligible for social housing) and secondly, they only account for 3 per cent of the overall working population. Although it is recognised by the Sub-Panel that J-categories have less of an impact on Jersey’s resources than Registered employees, it would still argue that they have more of an impact than is being portrayed by the two Ministers.

6.22 In addition to the changes that have already been discussed, under the new system businesses will be charged an annual fee for each J-category licence they hold. The fee proposals have not yet been finalised, but the Sub-Panel has been told that the anticipated annual charge per licence is £200. The Minister for Housing believes that this charge will make businesses think twice about holding onto licences that are not being utilised,

¹⁹ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 5

²⁰ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 6

particularly in our current economic climate²¹. During the Public Hearing with the Chief Minister, the Sub-Panel proposed levying a fee for Registered employees in addition to Licenced staff with the belief that it could help further deter businesses from employing non-locals. However, the Sub-Panel was told by the Director of Corporate Policy that this type of fee could have unintended consequences for businesses and at the same time may not produce the results desired:

*“The worry is that a charge for registered employees will not deter a business wanting to recruit them, but what it will do is push up their cost base at a time when the economy is having a difficult time. So the power is there to introduce this fee but it was not proposed on the current economic climate”.*²²

6.23 Despite the views expressed by the Director at the Public Hearing, the Sub-Panel has subsequently been informed that the Council of Ministers have agreed to introduce an annual fee of £50 per Registered employee permitted. The decision to introduce annual charges in respect of Registered Migrants appears to have been re-considered as a result of a continuing rise in local unemployment and is justified as being consistent in line with economic and strategic objectives (tackling local unemployment and targeting high value immigration that safeguards local employment). Although the Sub-Panel agree with the decision to introduce a charge for Registered staff there is some concern that the additional cost may discourage some businesses from complying within their licence conditions.

KEY FINDING

6.24 Subsequent to a Sub-Panel Public Hearing with the Chief Minister, it has now been agreed by the Council of Ministers to introduce a fee for all Registered Licences.

RECOMMENDATION

6.25 Effective enforcement measures must be developed alongside the new charge for Registered licences to minimise the risk of non-compliance amongst businesses.

²¹ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 10

²² Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 46

Unemployment

6.26 The Sub-Panel was told that the greater powers under the new law to revise and revoke licences at anytime will not only help to control migration levels but will also help to improve the current unemployment situation. The notion is that by controlling the number of registered workers in the Island, more jobs will become available for Entitled, unemployed persons. However, we would argue that the new law will only have a marginal impact on the present unemployment figures. When the profiles of migrants within Jersey are examined, they are not aligned with the highest economic growth areas but rather predominantly feature in the low-value sectors. For example as the Minister for Economic Development explained:

“There is far less pressure if you look up at the higher end then there again in the lower-value sectors. That is where the large numbers are coming in with families and all the associated paraphernalia and pressure on the infrastructure, schools and what have you. There is where the big problem is and that is where there is a focus and has been for some time, with job substitution and training skills”²³.

6.27 Despite the high levels of unemployment, the Sub-Panel was advised that local people do not want to work in a lot of the jobs that are available, particularly the jobs that are traditionally associated with non-local staff i.e. hospitality, agriculture and retail ²⁴. Although measures are being taken to try and overcome this issue, the Sub-Panel questions what impact this will have on local businesses operating under the new system. The Director of Corporate Policy has made an effort to reassure the public on many occasions that the new law will mean less ‘red tape’ for businesses. For example, businesses will no longer have to apply when they want to employ a local person. They will only have to apply for someone who has less than five years residency or the equivalent of a J-category licence. But will there be enough flexibility in the law to allow businesses to employ the right people?

6.28 Although the President of the Chamber of Commerce is fully supportive of the new legislation, he also holds the opinion that most businesses should be allowed a minimum of unqualified staff. For example, if a situation arises in which businesses are unable to find a local person who is qualified to do a job, it has been argued that another route must be available²⁵. The President’s concerns highlight the fact that population and migration control

²³ Transcript of Public Hearing with the Minister for Economic Development, 10th December 2012, page 22

²⁴ Transcript of Public Hearing with the Minister for Social Security, 17th December 2012, page 7

²⁵ Transcript of the Public Hearing with the Chamber of Commerce, 26th November 2012, page 14

is not just simply about restricting access to work and housing. Local people need to be educated and trained to undertake work in all sectors of employment so that businesses do not have to source off-island for qualified staff. If, however, a Jersey business was to find itself in a similar situation to what was described above it should still have the ability under the new law to apply for an additional registered licence and present a business case to the Chief Minister.

KEY FINDING

6.29 Tighter controls on unqualified licences will not independently solve the current unemployment situation.

KEY FINDING

6.30 It is now obvious that some local people need to be educated and trained to undertake work in areas that are traditionally associated with non-qualified people.

Registration Cards

6.31 Under the new Law, a Registration Card will be required to be used by individuals to prove their residential status when accessing work or engaging in a new purchase/lease of housing. It is intended that the use of the card will make those processes less burdensome than the current systems for the individuals, landlords and employers involved, as a person's entitlement will be clear without additional checks having to be made whilst also feeding into the broader purpose of the new register. It is also anticipated that the card will assist with compliance in particular in the area of assessing work, as it means that employers will not have to be relied upon to undertake the task of confirming their new employees' residential status, therefore removing the potential for mistakes. The intentions of the card were confirmed by the Minister for Economic Development:

“ there is some suggestion that some businesses are not as vigilant as they could be in assessing whether or not an employee that they are proposing to engage is qualified at the level that is appropriate; for example, high level and so on. Having this type of requirement should hope to tighten up on that”²⁶.

²⁶ Transcript of Public Hearing with the Minister for Economic Development, 10th December 2012, page 9

KEY FINDING

6.32 The existence of the Registration Card will make it easier for businesses to comply with the new legislation and their licence allocation.

6.33 The Registration Card is designed to be basic, recording the holder's name, social security number, issue date and residential status. It has been proposed that the new registration card will replace the existing Social Security card and, under the new law, will serve for Social Security purposes²⁷. The Social Security Department is proposed to be the main issuer of Registration Cards but the Population Office will also have the ability to distribute if necessary. When questioned regarding the need for additional manpower required by the introduction of the new cards, the Minister for Social Security told the Sub-Panel that apart from a slight concern regarding the initial rush, he did not anticipate a significant increase in the number of cards issued under the new law compared to the number of social security cards currently issued²⁸. In fact, the Population Office has estimated that only 5,200 additional cards will be issued under the new law in the first 5 years of operation (based on the material transaction points and known information).

6.34 The general policy intention is to issue registration cards to all of those who come to the Island with the intention of living and working in Jersey, and to established residents who wish to start new work or transact in property. Therefore, unless exempt by the Minister:

...a 3 month period of continuous ordinary residence for (new) arrivals, or the taking-up of employment, or the purchasing or leasing property are the 3 trigger points upon which Islanders will be required to register²⁹.

6.35 During Public Hearings the Sub-Panel questioned witnesses regarding the 90 day grace period recommended in which new arrivals can live in Jersey without having to register (provided that they do not seek work before this period). When the Sub-Panel sought clarification as to the reasoning behind this decision, the Director of Corporate Policy provided the following view:

“ There is a practical point here, that somebody might move to the Island first in a lodging house for a couple of days and then they might move to somewhere else for another month and then they might move somewhere else, which is their permanent place. Do you really

²⁷ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 10

²⁸ Transcript of Public Hearing with the Minister for Social Security, 17th December 2012, page 3

²⁹ P.37/2011 Draft Control of Housing and Work (Jersey) Law 201-, page 13

want the States of Jersey processing address changes for all those small changes? There is clearly quite a lot of administration involved in processing these changes of address³⁰.

6.36 A similar opinion was also shared by the Minister for Social Security and the Minister for Housing. Despite this, the Sub-Panel is not comfortable with the length of period that has been proposed. Although interpreted as an administrative burden by some of the witnesses, it could be argued that a period less than 3 months would be more appropriate given the aims of the new legislation. If a new arrival in Jersey can live legitimately on the Island for 3 months without having to obtain a card, and therefore not appearing on the Register of Names and Addresses, the incentive to join the system may indeed be lessened. For example, during the Public Hearing with the Minister for Social Security, the Sub-Panel was told that a black market economy will always be present and there will always be people operating outside of the law³¹. Accepting that this is the case, it could be argued that the current proposals may help to encourage non-compliance. If the new law required new arrivals to register within a shorter framework however, it could reduce the opportunity for illegal activity to take place.

KEY FINDING

6.37 New arrivals will be exempt from registering for the first 3 months of living in the Island, provided they do not work within that time period.

RECOMMENDATION

6.38 The Chief Minister should review the 90 days grace period as it is likely that it will lead to inaccuracies in the Register.

Proposed Registration Card Exemptions

6.39 Under the new law, certain persons shall be exempt from the requirement to have a registration card for work. It has been proposed, for example, that individuals who work for a non-resident undertaking are not required to apply for a registration card for work purposes as they are likely to stay in the island for only a short time. However, under the residence provisions, these individuals will need to apply for a card if they stay in Jersey for more than 3 months. Furthermore, these exemptions do not exempt the undertaking for who these

³⁰ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 25

³¹ Transcript of Public Hearing with the Minister for Social Security, 17th December 2012, page 37

individuals are working for from needing a licence; they only exempt the short-term worker from needing to register³².

6.40 The Sub-Panel raised concerns during Public Hearings with regard to this particular exemption proposal. One example is that the decision to exempt short-term workers from registering under the 90 day period conflicts with the States Strategic Priorities to manage population and migration levels and reduce unemployment among local residents. Without the requirement for these individuals to register, the Population Office will be unable to monitor the movement of short-term contractors in and out of the Island. Whilst the Director of Corporate Policy did accept that managing the transient populations was going to be challenging, he did not agree that issuing cards to every worker under a legitimately licenced contractor was cost-effective or indeed necessary³³. As we have discussed earlier, under the new law it is anticipated that the States will have greater control over the number of registered licences issued and this is where the Director of Corporate Policy believes the focus should instead be placed. For example, he commented:

“All the exemptions say is we will licence and manage the contractor rather than every individual employee...we can visit the sub-contractor who we have licensed, which will have a maximum number of people they can employ, to ensure that there are no more people on site than the licences we have given them”³⁴.

6.41 Whilst the Sub-Panel accepts the importance of managing the licence, it is still apprehensive as to whether the exemption of short-term workers will actually reduce the ability to enforce the law effectively. It could be argued that if the Population Office is unable to capture the individuals working and operating under each licence then there is no way of ensuring that they are working for the undertaking for the length of time permitted only. This uncertainty could have negative consequences for unemployed local residents who may otherwise be employed to work for that undertaking.

KEY FINDING

6.42 The proposal to exempt short-term workers from registering under a 3 month period could significantly affect the States ability to monitor transient populations and may increase the risk of non-compliance.

³² P.37/2011 Draft Control of Housing and Work (Jersey) Law 201-

³³ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 36

³⁴ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 36

RECOMMENDATION

6.43 With regard to the proposal to exempt short-tem workers from registering under a 90 day period, the Chief Minister should ensure that every individual employed under a legitimately licenced contractor is required to Register, before they can begin work.

Potential Tradability of the Registration Card

6.44 There is a great deal of concern among the Sub-Panel regarding the potential tradability of the registration card given the absence of a photograph. This issue was also highlighted by the previous Corporate Services Panel in 2011 in which it was recommended that more work be undertaken on the benefits of the inclusion of photographs on registration cards. Whilst the extent to which this subject had been considered was unclear, we were informed during the Public Hearings that there is now provision within the new law to introduce a photograph, if deemed necessary³⁵.

6.45 Whilst the majority of witnesses accepted the potential risk of tradability it was argued that the registration card would contain sufficient information without a photograph of the card-holder. It was also argued that changing the registration card into an ID card would be a step too far. For example, the President of the Chamber of Commerce provided the following view:

“how much more bureaucracy do you want to bring in? You know, you can keep on bringing in another layer after another layer after another layer. As long as we have something that can be verified in some way, shape or form or cross referenced then I think the new system looks like it’s going to be a pretty good one”³⁶.

6.46 In contrast to this opinion, the Sub-Panel would argue that it would be more bureaucratic and less practical for the user to have to carry around more than one card to prove their identification than it would be to have a photograph on the Registration Card. Furthermore, there is a high possibility that a greater number of mistakes or errors will be made without the necessarily details available on one card.

³⁵ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 37

³⁶ Transcript of the Public Hearing with the Chamber of Commerce, 26th November 2012, page 4

KEY FINDING

6.47 The Sub-Panel has not been convinced that adequate consideration has been given to the inclusion of a photograph on the new Registration Card.

RECOMMENDATION

6.48 The Chief Minister should review the current policy on photographic identification within 12 months of the new law being implemented.

6.49 In the absence of a photograph, the only way of reducing the risk of tradability is by ensuring that another form of photographic ID is presented alongside the Registration Card whenever it is used. The Sub-Panel was re-assured by the Minister for Social Security that it is already a requirement to ask for identification when people register for the Social Security card and that this will continue when the system changes. Furthermore, the Sub-Panel was also informed that the Social Security Department is currently working with the Population Office to develop an agency agreement which will include clearly defined roles and defined rules in regards to registration³⁷.

6.50 With regards to compliance and enforcement of this requirement the matter becomes more ambiguous once the card has been issued. Under the new law it will also become the responsibility of every employer, landlord, property agent and lawyer to ask to see the registration card to check the person's residential status. In order to ensure that the employee or tenant is who they say they are it is imperative that a rule is applied to these cards that specify that another form of identification *must* be presented alongside it. However, for this to work is it very important that the public are sufficiently informed regarding the rules and procedures for checking cards. The Sub-Panel feels that it should be the responsibility of the Population office or Social Security Department to make sure that the law is being adhered to and that no one is using their card inappropriately. Under the law a person who, with intent to deceive, forge, alter or use or lend to or allow to be used by any other person, any registration card is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine³⁸.

³⁷ Transcript of Public Hearing with the Minister for Social Security, 17th December 2012, page 5

³⁸ P.37/2011 Draft Control of Housing and Work (Jersey) Law 201-, page 65

KEY FINDING

6.51 In the absence of a photograph, it is imperative that a form of identification is shown alongside the new Registration Card for all transactions as a method of validation.

RECOMMENDATION

6.52 The Chief Minister should ensure that the public are sufficiently informed regarding the rules and procedures for checking Registration Cards prior to the new law being implemented.

Register of Names and Addresses

6.53 One of the key benefits which was continuously raised during this review was that the new Register of Names and Addresses (Jersey) Law will provide the States with a much improved depth and range of information, and that in turn should lead to decisions related to Migration and Population Policy being made on a much more informed basis. Furthermore, the Sub-Panel was told that the register would allow for greater control of population and migration levels by identifying non-compliance through the sharing of interdepartmental information³⁹. This second point will be discussed in greater detail later on in this report. However, for now it is important to consider the following questions – how is it anticipated that the IT system will work, and when can the population register be relied upon as a rolling measure of Jersey's population?

IT Mechanisms

6.54 Currently each department within the States of Jersey works autonomously and, from an IT perspective, most of them have their own IT systems and associated data. This has led to a situation where data about an individual may be inconsistent across departments. The new law therefore seeks to establish a single, centralised register of names and addresses for all residents of Jersey in which the Chief Minister will be responsible for its management. The Sub-Panel was advised that, at point of implementation, the register will be linked up to the databases at Income Tax, Social Security and the Population Office and the intention would be to link DVS (Driver and Vehicle Services) soon after the law is in force⁴⁰. It is also

³⁹ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 17

⁴⁰ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 17

envisaged that, in the future, the register will communicate with data from the Education Department and Health Department. In this regard, the Director of Corporate Policy commented:

“We are talking to the Health Department at the moment about bringing forward a regulation so that they can access the Name and Addresses Register and vice versa”⁴¹.

6.55 Three new IT systems have been created to manage the data, which will be contained in the Register, more efficiently.

- The first IT system has been named ‘Populus’ and this is the central register of names and address and will support the Register of Names and Address (Jersey) Law.
- The second is entitled ‘Opus’ which is a replacement for the existing Evolution Manpower system and will be used to support the undertaking aspects of the Control of Housing and Work (Jersey) Law.
- The third is entitled ‘Domus’ – this will replace the existing housing system and will be used to support the residential entitlements and housing categorisation aspects of the new Control of Housing and Work (Jersey) Law.

6.56 Furthermore, it is proposed that the following groups will have access to the new IT Systems:

- **Population Office (Residential Entitlement):** performing their day-to-day role of administering housing qualifications as well as citizen residential and employment statuses.
- **Population Office (Undertakings):** performing their day-to-day role of administering undertakings, licences and manpower returns
- **Social Security Department:** the public point of contact for members of the public wishing to register, request a registration card, notify of a change of address etc.
- **Citizen:** it is anticipated that in the future the public might be able to update their name/address, view the public part of the register of undertakings and view the public part of the register of housing through the States internet website.

KEY FINDING

6.57 At the point of implementation, the Register of Names and Addresses will be linked up to the databases held at Social Security, Income Tax and the Population Office.

⁴¹ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 18

When will the Register be reliable?

6.58 During the 'Population and Migration – Part 1' review; the Corporate Services Panel was informed by the Population Office that the Register would be up and running and in full working capacity by April 2013. Subsequent to this finding, it was agreed by the Panel that the Register would need to be validated by the Statistics Unit before it can be relied upon as a rolling measure of Jersey's population. It was further agreed that it would be neither appropriate nor effective to hold a debate on population policy without an accurate measuring system in place, particularly if the Council of Ministers was to decide to set limits for population numbers. Given the fact that the population register is a fundamental element of the new control mechanisms for population and migration, we agreed that the subject of reliability should be re-visited in this present review. When the Sub-Panel questioned the Director of Corporate Policy regarding the estimated time it would take for the register to be complete and accurate, the following response was provided:

"..the Statistics Unit will be auditing the Population Register at 6-monthly periods, so they will be able to validate to us their independent view as to how accurate it is. You know, obviously I would hope and expect at 6 months they would come around and tell us this is complete and accurate, but if they do not, we will know and then we will plug in more systems".

Deputy G.P. Southern

" we were talking to the Stats Chief a month ago...and he suggested that you would not be bringing in the register for at least 4 or 5 years. Is that your own assessment of how long it might take?"

Director of Corporate Policy

"The Statistics Unit are naturally cautious, of course they are. My understanding of their position is they will benchmark our register against their own statistical modelling at each manpower return point, i.e. every 6 months. I would not expect the Statistics Unit after one matching process to say "right there you go. I am happy with it" I think that they will want to see it over time, so if they have said their timeline might be 4 or 5 years, but if the first alignment against database says that our database is complete and accurate per their modelling, I think that gives you a lot of comfort"⁴².

⁴² Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 23

KEY FINDING

6.59 There is a great deal of uncertainty as to when the Population Register can be relied upon as a rolling measure of Jersey's Population.

6.60 Although the Director of Corporate Policy never deviated from the fact that populating the Register was a huge and challenging task, the Sub-Panel is unsure as to the extent to which the size of the task was fully appreciated when the target dates for the Register were first announced. On 11th December 2012, for instance, it was agreed by the Council of Ministers that the original budget assigned to the development of the Register of Names and Addresses of £565,000 was insufficient. Due to the unanticipated complexity of the work involved in populating the register, the decision was made to increase the original budget by £350,000. Whilst the Sub-Panel cannot assume that the increased complexity will bring any delays to development of the Register, the decision to significantly increase the budget does confirm that the task has been a lot more challenging than what was originally expected.

6.61 Since the Public Hearings the Sub-Panel requested and received further information from the Population Office with regard to the current status of the Register and its development. Unfortunately the data received did not help to alleviate the concerns that were previously discussed on this subject. The Sub-Panel was told that as of 11th January 2013 (2 months and 25 days until the new law will be implemented) 36,512 (36.92%) records were still to be checked and 11,486 records (11.62%) needed further validation. Therefore, despite the fact that data cleansing began in July 2011, only half of the individual records that exist in the current databases had been inputted into the new IT system as of 11th January 2013⁴³. Given that it has taken the Population Office a year and a half to validate only half of the records required, it is plausible to suggest that the target date of 6 months (post implementation) for this task to be completed is unrealistic.

6.62 Interestingly, it appears that inaccuracies already exist in the information that is being held by the current databases. For example, the data provided by the Population Office shows that, as of 11th January 2013, 114,354 Jersey residents were registered with Social Security. The Sub-Panel is of the view that unless the latest Census results were inaccurate or the population figure has increased by 16,497 since March 2011, it may be assumed that this figure is incorrect and requires further investigation. The Sub-Panel also believes that this particular finding does not inspire much confidence in the target date being proposed by the Population Office for the completion of the Register. It has become apparent again to the

⁴³ Current Statistics of the Population Register, received by the CM Department on 18th April 2013

Sub-Panel that a lot more work needs to be undertaken before the Law goes live in April 2013 and before the Register can be relied upon as a rolling measure of Jersey's population.

KEY FINDING

6.63 A considerable amount of work still needs to be undertaken by the Population Office before the Register will be complete.

KEY FINDING

6.64 The Population Office significantly underestimated the resources needed to implement the Register of Names and Addresses.

KEY FINDING

6.65 Any significant delay in the completion of the Register will have a considerable effect on the new system and its ability to control population and migration levels.

Exit Poll

6.66 The issue of exit polls and the ability to record people leaving the island has been a subject of contention for a while now. Due to Human Rights issues there has always been a difficulty on enforcing laws on people departing the Island. In an attempt to overcome this problem under the new system for the purposes of the register it will become the responsibility of the landlord to notify the Population Office if a resident intends to leave that address, or has left that address, because they intend to cease or have ceased being ordinary residents in Jersey. Furthermore, the person to whom accommodation is provided is also under obligation to inform the Population Office if they are to leave the property⁴⁴.

6.67 The extent to which this will happen in practice is unknown and will only become clear once the law is implemented. The matter of exit polls was raised with the Minister for Social Security whom echoed the sentiments of other witnesses that we heard from during our Public Hearings that the new IT System would soon indicate discrepancies that would show that somebody had left:

⁴⁴ Control of Housing and Work (Jersey) Law – page 67

“...it’s not just Social Security or Income Tax giving new information to the register, because we have not mentioned I.T.I.S., because of course people will be paying tax and therefore if their I.T.I.S. stops being paid, there is another indication that they are not in work or that have left the Island. So there are various sources of information which will enable the register to be kept up to date”⁴⁵.

6.68 Another way in which the new system has the potential of tracking those who leave the Island is through the presence of the Registration Card. It is presently envisaged that anyone leaving the Island must notify the authorities and hand in their card. Policies and procedures are due to follow to support compliance efforts in general and to take people who have left off the Register to ensure up to date information. Again, until this system is in place and the Registration Cards have been issued we have no way of knowing how effective this requirement will be. In 2011, the previous Corporate Services Panel also considered the issue of exit polls during its *Migration: Control of Housing and Work* review and recommended that an incentive be introduced to encourage people to hand their cards in when departing Jersey. Since this review, a charge for the registration card has been introduced and, although the fee proposals are yet to be finalised, it is anticipated that it will cost around £75 for new Registered and Licenced migrants⁴⁶. The matter of how to deal with people leaving the island was addressed by the Minister for Social Security during a Public Hearing:

“We had a discussion among ourselves the other day as to whether some of the money could be refundable, which would give an opportunity for somebody to return their card if they are leaving, but there has been no decision on that”⁴⁷

RECOMMENDATION

6.69 Further consideration should be given to the establishment of a refund system for the Registration Card in order to help monitor population levels more efficiently.

⁴⁵ Transcript of Public Hearing with the Minister for Social Security, 17th December 2012, page 43

⁴⁶ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 34

⁴⁷ Transcript of Public Hearing with the Minister for Social Security, 17th December 2012, page 6

7. THE NEED FOR ENFORCEMENT

- 7.1 The control of immigration has been one of the major failures of the States since the 2005 ministerial reform and many would argue that this is due to the fact that the current control mechanisms were neither sufficiently managed nor enforced. For example, the fact that no prosecutions have been made under the Regulation of Undertakings and Development (Jersey) Law since it was introduced in 1971 raised doubts over the ability of Ministers and their Departments to enforce existing laws.
- 7.2 Throughout this report the Sub-Panel has highlighted a number of concerns and recommendations in regards to the main provisions of the new legislation and the associated Regulations. Although it is believed that improvements can be made to the new laws which will help control population and migration more effectively, we would argue that the real success of the legislation is dependent on the extent to which it is policed and enforced in the future.
- 7.3 Many of the witnesses told the Sub-Panel that they were confident that the new legislation will enable the States to enforce compliance far better than they have in the past. This view, for example, was very much expressed by the Minister for Housing:

“...I think it is worth saying this law is enforceable, whilst the Regulations of Undertakings, it was very difficult to get a grip on, which is why you see virtually no prosecutions...the law is possible to enforce, so from that point of view, it is a much better one than the current regulations”⁴⁸

In order to provide an informed view regarding this matter, the subject of enforcement will be examined in great detail throughout this chapter and in doing so we will endeavour to answer the following questions: How will the new law be enforced? Who will be responsible for its enforcement?

Identifying non-compliance

- 7.4 The subject of enforcement can be separated into two main components; finding non-compliance and taking action once identified. The Director of Corporate Policy has assured the Sub-Panel that various measures exist within the new law to enable both of these to

⁴⁸ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 17

happen⁴⁹. Firstly, it is hoped that the introduction of the Registration Card will reduce the extent of non-compliance from occurring to begin with. Under the current system it is not easy for businesses to comply with the law because they have to check with the Population office whether the person applying for the job has completed their five years residency. The Registration Card proposes to provide an employer with the information necessary to ensure that they are complying within their licence allocation. In regards to identifying non-compliance, the matter is slightly more complex. During the evidence gathering stage of this review, the Sub-Panel was advised by the Population Office that the new legislation will help facilitate the identification of non-compliance in a number of different ways. These will now be considered in turn.

Manpower Returns

7.5 There will still be an obligation placed on businesses to submit Manpower Returns every 6 months under the new law. In the future however licence holders will be required to submit a new-style Combined Return which, it is hoped, will provide the Population Office with a better understanding of who is working for an undertaking. The returns that businesses currently have to produce for the manpower, I.T.I.S. (Income Tax Instalment Scheme) and Social Security will be done as one rather than three returns. The Director of Corporate Policy highlighted the benefits of this new system to the Sub-Panel:

“...the manpower returns that we get every 6 months now, that is in most cases a paper form and they just put a number for their non-locals on there. We do not know who they are. We will now combine that with Social Security returns, so we will know absolutely who they are. We will be able to check their residential status against the Register. That is a huge benefit”⁵⁰.

7.6 Most importantly, the Combined Return will mean that compliance with licence conditions can be easily checked and enforced⁵¹. Similar to the existing system, failure to submit Manpower Returns under the new law may result in prosecution. Furthermore, it has been proposed that the new and improved Return will provide greater clarity of information for the Population Office, and therefore allow the States to make more informed decisions on various policies regarding immigration, population and economic development.

⁴⁹ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 11

⁵⁰ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 17

⁵¹ P.37/2011 Draft Control of Housing and Work (Jersey) Law 201-, page 21

KEY FINDING

7.7 The new Combined Return will provide the States with a much improved depth of information which in turn should allow for better licence enforcement.

Sharing of Information

7.8 As with any legislation, there is always a concern that individuals may choose to operate outside of the system illegally, for one reason or another. This concern was expressed by the Sub-Panel in regards to the new *Control of Housing and Work (Jersey) Law*. For example, the new control system is highly reliant upon the inherent honesty of employers, landlords and people in general and, whilst we expect the majority of people to comply with the law, it is inevitable that some will choose to abuse it. When the Sub-Panel asked the Minister for Housing his opinion regarding the effectiveness of self-regulation, the following response was provided:

"I truthfully do not know how effective. I hope it will be effective. It depends on how good we are at being properly informed. I have no idea until we try it, to be honest with you"⁵².

7.9 Whilst the reservations expressed by the Minister are understandable, it is vital that the Population Office have a way of capturing those individuals who intentionally defy their obligations under the law. Furthermore, given our current unemployment situation, it is particularly important that we are able to identify people who are working on the Island illegally, having not registered at Social Security. As mentioned earlier, the Sub-Panel was advised during the Public Hearings that the register would allow for greater control of population and migration levels by identifying non-compliance through the sharing of interdepartmental information⁵³. The Assistant Chief Minister explained to the Sub-Panel how the new IT system is going to assist in detecting people who are operating in the black market:

"Well, the structure of the legislation and all the various cross-information across the various departments is going to make it harder for them to be outside of the system to a certain extent because, even if they wanted to go to the doctor, we are going to know. Social Security pays a subsidy for someone to go to the doctor. We are going to pick up on whether they exist or not. If they in the future, for instance, were to go and register a car, we would

⁵² Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 20

⁵³ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 20

have a link with D.V.S. to know if they are registering a car. So there is going to be lots of cross-referencing of information⁵⁴.

KEY FINDING

7.10 If the IT system works as envisaged, there is high chance that improved sharing of information will lead to a more efficient and effective compliance operation.

KEY FINDING

7.11 In order to reap the real benefits of the Register it is imperative that as soon as non-compliance is identified officers are sent to investigate and if necessary take action.

Spot checks

7.12 As we highlighted earlier, the key to success of this new legislation is enforcement. We have been told that the new system will give the States more powers to control population and migration but if these powers are not used, it could be argued, that we will be in same predicament as we are with the existing system. When the Sub-Panel questioned Ministers regarding the level of policing that currently takes place under the existing law, the responses were quite surprising. For example, in the last 12 months we were told that only 3 checks had been made at the harbour with the intention of detecting the so called ‘white van man’⁵⁵. Although the Population Office advised the Sub-Panel that a relatively high level of compliance had been found, it could be argued that in light of the Census results and the current concerns regarding immigration and population figures this level of policing is completely inadequate. The Sub-Panel hope that under the new system, which seems to place more emphasis on compliance and enforcement, harbour checks will occur on a more frequent basis. In this regard the Sub-Panel was advised by the Director of Corporate Policy that his wish was to increase the number of checks to 6 a year in the future⁵⁶. However, the Sub-Panel was still concerned that 6 checks would be insufficient given the size of the task at hand.

⁵⁴ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 17

⁵⁵ Transcript of Public Hearing with the Minister for Economic Development, 10th December 2012, page 9

⁵⁶ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 20

7.13 The President of Chamber of Commerce was also very much in favour of the Population Office completing random checks at the harbour on a more regular basis:

“Yes, absolutely, I have no problems with that at all. I think it is absolutely right if you are serious about trying to control this problem and we want to keep jobs on Jersey and we want to keep them in our community and without money flowing away, at the end of the day if people are doing this randomly what are we losing as an island? We are losing employment opportunities; we are losing Social Security; someone has to pay for health. The job may be cheaper and all the rest of it. No wonder it is cheaper because you are not contributing to our society”⁵⁷.

7.14 Unfortunately, no evidence came to light to suggest that spot checks at the workplace or at rented accommodation were being carried out by the Population Office on a regular basis either. We were advised by the President of Chamber of Commerce that in the 20 years he has been running his own business he had never had a visit from the Population Office⁵⁸. The President offered the Sub-Panel a number of reasons why he believed spot checks would be beneficial to businesses and community as a whole. For example, he told the Sub-Panel that in the past there has been uncertainty among some employers as to their licence conditions and how many unqualified persons they were permitted to employ. With a new system being introduced this year, however, it is believed that spot checks could help businesses in verifying that they are working within their entitled licence allocation and confirming that they are aware of any changes that have been made under the Control of Housing and Work Law⁵⁹. Furthermore, the President also recognised the need for spot checks in regards to compliance and enforcement. He commented:

“It still does need to be policed by somebody and if business is totally confident that nobody in Government is ever going to look at these cards and check you out then you may as well have not bothered”⁶⁰.

7.15 The lack of spot checks made by the Population Office in the past particularly concerned the Sub-Panel when considering contractors and subcontractors in the construction industry. Earlier on in the report we briefly explained the issues we have regarding the proposal to exempt short-term workers from registering under the 90 day period. These concerns are amplified with the knowledge that, currently, necessary visits are not being carried out by

⁵⁷ Transcript of the Public Hearing with the Chamber of Commerce, 26th November 2012, page 44

⁵⁸ Transcript of the Public Hearing with the Chamber of Commerce, 26th November 2012, page 8

⁵⁹ Transcript of the Public Hearing with the Chamber of Commerce, 26th November 2012, page 43

⁶⁰ Transcript of the Public Hearing with the Chamber of Commerce, 26th November 2012, page 10

compliance officers to ensure that main contractors hold the appropriate licences required. Although we have been reassured that, under the new law, licences will be managed and controlled more efficiently, we are dubious as to the extent to which this will happen in practice. What was clear from the Public Hearings, however, is the high level of support for more regular spot checks. For example, the Minister for Economic Development provided the following view:

“The view under the new law is that the level of checking needs to increase and I think that is absolutely correct. It should do.”⁶¹

KEY FINDING

7.16 The number of compliance checks carried out under the existing system is inadequate.

RECOMMENDATION

7.17 The Chief Minister should ensure that more frequent compliance checks are carried out at the appropriate locations to ensure that the new legislation is being adhered to. Failure to do so could significantly reduce the effectiveness of the new control mechanisms.

‘Boots on the Ground’

7.18 The Population Office currently has 1.5 full time equivalent positions specifically for compliance and, the Sub-Panel was advised that when the new law is introduced this number is likely to increase to 2.5⁶². The Sub-Panel was concerned that 2.5 F.T.E. will not be sufficient to carry out compliance on both housing and work. Furthermore, if the number of spot checks is to increase, as hoped and expected, then it is very difficult if not impossible to comprehend that 2.5 compliance officers will suffice. In response to these concerns, the Director of Corporate Policy explained how the new ‘streamlined’ application process would enable him to use existing staff for compliance activities:

“...there is not always a clear line between compliance and administration. I could say there do not have to be boots on the ground people in addition to that 2.5 minimum. The other staff can do things like review exception reports from the other departments, work the

⁶¹ Transcript of Public Hearing with the Minister for Economic Development, 10th December 2012, page 19

⁶² Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 15

*phones. I would like to see us being more proactive in terms of accessibility so people will be able to call us and complain and highlight problems which we will investigate. So at from 1.5 to 2.5 in terms of actual boots on the ground, but also get the other staff doing more compliance work*⁶³.

7.19 In addition to this, the Sub-Panel was told that closer working relationships with the Social Security Department and Customs and Immigration in the future will mean that non-compliance can will be indentified without further needing to increase the number of 'boots on the ground'. Social Security has its own enforcement team who police the Social Security Law. In 2012 for example, the team carried out 405 surveys of which 104 were conducted on builders with an additional 54 building site visits. It is envisaged that under the new law, Social Security and Immigration and Customs will be able to inform the Population Office if non-compliance under the Control of Housing and Work Law is suspected⁶⁴.

7.20 Although the Sub-Panel recognise that improved communication between the Population Office and other Departments would be beneficial for compliance purposes, it remains extremely sceptical about whether 2.5 'boots on the ground' staff will be able to police the new law effectively. When we asked the Director of Corporate Policy whether, in his opinion, 2.5 staff would be adequate to deal with the enforcement of such an extensive law he provided the following response:

*"If it is not, we will invest more. I think it is essential we make this system enforceable"*⁶⁵

KEY FINDING

7.21 There is great deal of uncertainty as to whether the proposed increase in manning levels from 1.5 to 2.5 'boots on the ground' staff will be sufficient to enforce compliance with the Control of Housing and work law.

RECOMMENDATION

7.22 When the new law is in operation, the number of officers available to the Population Office should be re-assessed to ensure that it is adequate.

⁶³ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 15

⁶⁴ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 4

⁶⁵ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 16

'Whistleblowing'

7.23 During its review, the Sub-Panel discovered that 'whistleblowing' (officially called 'making a disclosure in the public interest') in the Isle Man was highly relied upon for identifying non-compliance within the community. The IOM enforcement team receives high levels of phone calls from Members of the public who were concerned that people are working illegally on the Island. For example, in 2011 184 visits were made by enforcement officers to employers and individuals and of those 77 had been prompted by information received from an external source. It could be argued that a similar system, in which members of public are actively encouraged to contact authorities with information, would benefit Jersey in regards to population and migration control. During a Public Hearing with the Minister for Social Security, we were advised that his Department already has a well-established communication line with members of the public who occasionally provide 'tip-offs' with regard to potential fraudulent behaviour⁶⁶. When the subject of whistleblowing was posed to the Director of Corporate Policy he also agreed that the public should be encouraged to contact his Department with any information regarding non-compliant behaviour:

"We do obviously get whistleblowing now. Personally, from a compliance and enforcement point of view, I would like to see more. I would like to see more leads that we can follow up"⁶⁷.

7.24 The Chief Minister recognised that such a system could also help reduce the number of islanders willing to employ illegal workers:

"If people think that it is more likely that the person they potentially will use is going to be prosecuted or stopped from working, then they themselves will think twice, so it would hopefully have a doubly positive effect"

It was acknowledged by the Sub-Panel, however, that in order for whistleblowing to be successful, members of the public need to be confident that action will be taken when non-compliance is identified. Furthermore, the Population Office must be appropriately resourced to take immediate action.

⁶⁶ Transcript of Public Hearing with the Minister for Social Security, 17th December 2012, page 17

⁶⁷ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 12

KEY FINDING

7.25 A culture of 'whistleblowing' in Jersey could be key to ensuring that the new system is enforced.

RECOMMENDATION

7.26 The Chief Minister should ensure that members of the public are actively encouraged to report any suspected non-complaint activity to the Population Office so it can be further investigated.

Taking action

7.27 During a Public Hearing, the Director of Corporate Policy made a statement which exactly mirrors the sentiments of the Sub-Panel on the subject of enforcement:

"people have got to operate in Jersey on the understanding that if they are in breach of the law that it is likely we will find you and it is likely we will take action"⁶⁸.

7.28 In the Sub-Panel's view, in order for the new law to achieve its aims and objectives and accomplish what the existing law failed to do, it is imperative that the public know that non-compliance will be identified and penalised. One of the main reasons that no prosecutions have been made under the existing system is because the Regulation of Undertakings and Development (Jersey) Law is very difficult to enforce. For example, when an unlicensed activity is identified under RUD Law, the unlicensed undertaking may well have left the Island by the time prosecution eventually takes place. However, the Sub-Panel has been advised that under the new law the Population Office can issue a warrant if they so choose and the activity can be ceased immediately⁶⁹. It is intended that these increased powers will give the Minister greater ability to control those businesses that operate either without a licence or beyond the authority of the licence (i.e. so called 'white van man')⁷⁰. It is in the view of the Sub-Panel therefore that, as long as they are exercised, the new powers will provide an important means of enforcing compliance with the Law.

⁶⁸ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 14

⁶⁹ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 11

⁷⁰ P.37/2011 Draft Control of Housing and Work (Jersey) Law 201-, page 22

KEY FINDING

7.29 The real success of the new legislation is dependent on the extent to which it is policed and enforced

KEY FINDING

7.30 Provided they are exercised, the new powers to cease illegal activity immediately will provide an important means of enforcing compliance with the law.

7.31 Whilst discussing the area of compliance and enforcement, it is essential to consider the transition period between the existing law and new law and the possible implications for individuals operating under the system. Firstly, it is imperative that the Population Office work *with* businesses to ensure that the new law is managed in a fair and pragmatic way. It was recognised by the President of Chamber of Commerce that in the past the law has not been evenly applied across all industries operating in Jersey. For example, he told the Sub-Panel:

“...certain people seemed to be able to get unqualified licenses quite easily. Others there was a complete clamp down on and I just felt that was totally unfair at the time. There had to be some kind of generic rule which could be applied”⁷¹.

7.32 Secondly, and most importantly perhaps, the Population Office need to ensure that the public are well informed regarding any changes that have been made that will affect them under the new law. It would be unreasonable to assume that people could comply with the law without having been sufficiently notified of what the new system entails. During a Public Hearing with the Economic Development Minister he told the Sub-Panel that, since sitting in MAG, he was very surprised by the number of businesses that did not understand the Law or indeed their obligations and responsibilities under it⁷². In this regard, the Sub-Panel is concerned that the situation will be similar, if not worse, when the new law is introduced, particularly due to the seemingly complicated nature of the legislation. When we questioned the Assistant Chief Minister regarding the need for a media campaign, the following response was provided:

“ I think we are gearing ourselves up for that as soon as the regulations are launched”

⁷¹ Transcript of the Public Hearing with the Chamber of Commerce, 26th November 2012, page 9

⁷² Transcript of Public Hearing with the Minister for Economic Development, 10th December 2012, page 15

Deputy R.J. Rondel

“what do you plan to do to inform, because I think a few are a little nervous about what their responsibilities are and what they will have to do?”

Chief Minister

“We need to get the regulations finalised, firstly, because there is some detail in there. When the States have approved these we will then have a clear understanding of exactly what the States want to achieve with the Regulations”⁷³

He further commented:

“once we are clear with that we will then have a communications strategy, which is being worked on currently, to all sorts of ways of communicating with the business community and landowners the best we possibly can, but we are working on that”⁷⁴.

7.33 It is vital that the public are informed about the new law as soon as possible so they understand the process in advance of the legislation coming into force in April. This would be particularly important for businesses operating in the tourism sector as we will soon be approaching the beginning of the tourist season.

KEY FINDING

7.34 The Population Office must work *with* businesses to ensure that the new law is understood and managed in a fair and pragmatic way.

RECOMMENDATION

7.35 Once the Regulations have been agreed by the States Assembly and in advance of the new system coming into force, the Chief Minister should ensure that the general public are sufficiently notified regarding the provisions of the new legislation.

Political Responsibility

7.36 Under the present legislative framework the management of population falls under two Ministers; the Minister for Housing and the Minister for Economic Development. The Minister for Housing currently determines the J categories with advice from colleagues and the Minister for Economic Development determines the other licences under Regulation of

⁷³ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 38

⁷⁴ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 39

Undertakings and Development Law⁷⁵. Under the new framework, the Minister for Economic Development will have significantly reduced responsibilities, as the legislation will be incorporated within the remit of the Chief Minister. The Minister will, however, sit on a formal board, created under the law, which will act as an advisory group to the Chief Minister who will be responsible for making those decisions⁷⁶.

7.37 Another significant change in Ministerial responsibility is the transfer of responsibility for the determination of what are currently J-Category licence applications (will become 'Licenced' status under the new law) from the Minister of Housing to the Chief Minister. Under the new law it will be the Chief Minister's responsibility to decide who will and who will not receive a licence. The Minister for Housing told us that this was not a change he was in favour of, explaining:

"I think my main concern was not around the undertakings. My main concern was around the Js and that I felt that it should remain with the Minister of Housing. I know the Minister for Social Security felt it should go to them, but I felt it should remain – as Deputy Power did – with the Minister for Housing. Primarily, I have to say that it was focused on one area, that a lot of the Js come from the Chief Minister's department, request for Js. The majority of Js in the private sector are for high-value net worth, and there is no query on that, but I wanted some independence from the Chief Minister's Department. It is their department that use the majority of Js, if you take out nursing and education, and I felt it should remain independent or slightly independent"⁷⁷.

7.38 In July 2011, before the law had been approved, the Minister for Housing expressed similar views to the Corporate Services Panel during its 'Migration: Control of Housing and Work' review. As a result, the Panel recommended that the Control of Housing and Work Law should be amended to give responsibility for the determination of 'Licenced' post applications to the Minister for Housing, in line with the current system for J-Category licence applications⁷⁸. However, the recommendation was rejected as it was felt that the Chief Minister is best placed to take an overview of the competing issues and demands involved in managing immigration and population. Despite this response in 2011, during a Public Hearing for our review the Assistant Chief Minister suggested an alternative way of overcoming the potential conflict of interest that the Minister for Housing is concerned about:

⁷⁵ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 2

⁷⁶ Transcript of Public Hearing with the Minister for Economic Development, 10th December 2012, page 2

⁷⁷ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 3

⁷⁸ S.R.9/2011, Migration: Control of Housing and Work, page 22

I have thought about this long and hard and I do wonder whether, because we have got the migration advisory group, we can find a way of treating those applications whereby perhaps the Assistant Chief Minister did not have any input into that particular decision-making because they are assisted by the Minister for Housing, the Minister for Economic

*Development in that decision making process. It may be a way that we need to carve out a way that the Chief Minister does not have a conflict, if there is such a thing*⁷⁹.

7.39 The Sub-Panel's main concern is that, under the new framework, the Chief Minister will be ultimately responsible for Population and Migration control despite the fact that he is also partly responsible for economic development and growth of the Island. It could be argued that it would be more appropriate for the Minister for Housing to oversee the delivery and management of the control mechanisms due to his vested interest in keeping housing numbers down. During a Public Hearing, the Chief Minister told the Sub-Panel that, despite his own belief that the responsibility should sit with the Social Security Minister, the States overwhelmingly agreed that Population and Migration should be the responsibility of the Chief Minister's Department when the Law was debated in 2011⁸⁰. The decision of the Assembly is supported by both the Minister for Social Security and the Minister for Economic Development who both agreed that the Chief Minister's Department was most appropriate due to its more neutral position. Furthermore, although the Chief Ministers involvement in economic growth was recognised, neither witness believed that it would create conflict with his new role of managing population and migration. For example, the Minister for Economic Development commented:

*"He has ultimate responsibility for the success of the Government and I would suggest that having a successful economy is a key aspect of that. So, yes, of course he does, but I think it gives the perception, and the reality is, that it would be more even-handed and appropriate for him to have overall control"*⁸¹.

KEY FINDING

7.40 The issue of political responsibility for the implementation of the Control of Housing and Work Law has not yet been fully resolved.

⁷⁹ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 44

⁸⁰ Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 43

⁸¹ Transcript of Public Hearing with the Minister for Economic Development, 10th December 2012, page 32

RECOMMENDATION

7.41 The Chief Minister should ensure that the structure of Migration Advisory Group is included in his assessment of the effectiveness of the new legislation.

8. THE FUTURE DEBATE

- 8.1 As mentioned earlier on in this report, it is intended that the Population Policy debate will take place later on this year (the exact date is yet to be confirmed by the Chief Minister's Department). The Sub-Panel has been told by the Chief Minister that the new legislation will give the States the tools to manage whatever population policy it is that arises out of the wide debate⁸². Until that decision has been made, however, the Sub-Panel is unable to say with complete confidence that the new system will be capable of achieving the aims and objectives agreed. From the evidence considered during this review it is clear that under the new law the States will have greater powers to control population and migration than they currently have under the existing system. The question that the Sub-Panel has been unable to answer, however, is whether the States will *choose* to use those powers and enforce the law. Although it is hoped that the new legislation will solve all the problems that we have endured under the existing system, unfortunately this is not the case. The success of Population and Migration control is ultimately dependent on the decisions that are made within the Assembly and, subsequently, how the law is managed in line with those decisions.
- 8.2 During a Public Hearing, the Minister for Housing told the Sub-Panel that, realistically, he could not see the level of net inward migration reducing significantly under the new Control of Housing and Work Law but rather remaining stable⁸³.
- 8.3 However, it has been projected by the Statistics Unit that if the trends in inward and outward migration seen in 2010 continued at the same level for the next decade, the total resident population size in 2020 would be 107,000⁸⁴. Whether the States continue with an open door policy, that has occurred of late, or whether population and migration limits will be set is a discussion that falls out of the remit of this report. However, it is a subject that will require further consideration before the Population Policy debate takes place.
- 8.4 We have already discussed our concerns regarding the current status of the Population Register and the potential implications of its delay for controlling population and migration under the new system but what does this mean for the Population Policy debate? When the Minister for Housing was asked by the Sub-Panel what would, in his opinion, be the test for the effectiveness of the new Control of Housing and Work Law he provided the following answer:

⁸² Transcript of Public Hearing with the Chief Minister, 17th December 2012, page 3

⁸³ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 44

⁸⁴ 2012 Jersey Population Projections, Statistics Unit, September 2012

“Initially that we have reliable information that we can make the right decisions on...you cannot make decisions on half the information; we do not have the information at the moment; we do not truly know everything that we ought to know. We will know that”⁸⁵.

- 8.5 It could be argued therefore that it would be inappropriate and ineffective to hold a debate on population policy without all the information available. On the other hand, however, it would be undesirable to suggest a further delay to the debate given the urgency of these matters. As an alternative, the Chief Minister should give due consideration to providing the Population Office with increased resources to help ensure that the Register is fully functional before the debate so that States Members can make informed decisions regarding the Island’s future.

RECOMMENDATION

- 8.6 The Chief Minister should give due consideration to increasing the resources available to the Population Office to ensure that the Register of Names and Addresses is fully functional before the Population Policy debate in order to inform decisions regarding the Island’s future.**

⁸⁵ Transcript of Public Hearing with the Minister for Housing, 10th December 2012, page 45

9. CONCLUSION

- 9.1 Whilst examining the new legislation the Sub-Panel found that a number of improvements could be made to the draft Regulations to ensure that the top priorities of the 2012 Strategic Plan (to ‘manage population growth and migration’ and ‘get people into work’) are being appropriately addressed.
- 9.2 The Sub-Panel also found, however, that the real success of the legislation is dependent on the extent to which it is policed and enforced in the future. Under the new system the Population office need to ensure that the correct compliance checks are carried out in the workplace and at the harbour to confirm that individuals and businesses are complying with their licence conditions. If compliance procedures are not significantly improved under the new law it is inevitable that the Island will face the same problems as we currently have under the existing system.
- 9.3 Unfortunately, however, the implementation of the new legislation will not resolve the issue of increasing population and migration levels and all its associated problems. The extent to which population and migration will be controlled in the future depends on the decisions that are made during the debate on Population Policy. Although it was originally intended that the Population Register would be complete and accurate by April 2013, the evidence seems to suggest otherwise. Although the Sub-Panel is yet to receive confirmation on when the debate is likely to take place, there is a possibility that the Register will not be fully functional in advance of these discussions. It can be argued that it would be inappropriate and ineffective to hold a debate on population policy without all the information available. It is imperative therefore, that due consideration is given to providing the Population Office with increased resources to help ensure that the Register is complete and accurate before the debate so that States Members can make informed decisions regarding the Island’s future.

10. APPENDIX 1 – PANEL MEMBERSHIP AND TERMS OF REFERENCE

10.1 The Corporate Services Scrutiny Sub- Panel comprised the following members:

DEPUTY S. POWER, CHAIRMAN

DEPUTY R.J. RONDEL, VICE-CHAIRMAN

DEPUTY J.M. LE BAILLY

DEPUTY G.P. SOUTHERN

CONNETABLE S.A. RENNARD

10.2 The following Terms of Reference were established for the review:

1. To consider the effectiveness of the provisions proposed in the *Control of Housing and Work (Jersey) Law* and associated regulations, in light of the 2011 Census results.
2. To examine the political responsibility that has been proposed in the new Legislation and its appropriateness.
3. To assess alternative Control of Housing and Work Legislation present in other Jurisdictions
4. To consider whether the qualifying period for access to Work should be reassessed in light of the recent Census results.

11. APPENDIX 2 – EVIDENCE CONSIDERED

The following documents are available to read on the Scrutiny website (www.scrutiny.gov.je) unless received under a confidential agreement.

Documents

1. Migration: Control of Housing and Work (S.R.9/2011), Corporate Services Scrutiny Panel, Presented to the States on 1st July 2011.
2. Draft Control of Housing and Work (Jersey) Law, Lodged on 15th March 2011 by the Chief Minister
3. Draft Register of Names and Addresses (Jersey) Law, Lodged on 15th March 2011 by the Chief Minister
4. Control of Housing and Work (Exemptions) Order 201- (Draft 4)
5. Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 201- (draft 26)
6. Control of Housing and Work (Transitional and Consequential Provisions) (Jersey) Regulations 201- (draft 19)
7. Jersey Annual Social Survey 2012
8. 2011 Census Bulletins, Statistics Unit

Public Hearings

- | | |
|--|---------------------------|
| 1. Mr D. Warr, President, Chamber of Commerce | 26 th Nov 2012 |
| 2. Deputy A.K.F. Green MBE, Minister for Housing | 10 th Dec 2012 |
| 3. Senator A.J.H. Maclean, Minister for Economic Development | 10 th Dec 2012 |
| 4. Senator F. du. H. Le Gresley | 17 th Dec 2012 |
| 5. Senator I.J. Gorst, Chief Minister | 17 th Dec 2012 |